

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Franklin Raspberry II,

Plaintiff

v.

U.S. Bank National Association,

Defendant

Case No. 2:25-cv-00070-CDS-BNW

Order Adopting Magistrate Judge's Report
and Recommendation and Dismissing Case

[ECF Nos. 3, 4]

Plaintiff Franklin Raspberry II commenced this action to exercise his right to participate in Nevada's Foreclosure Mediation Program with defendant U.S. Bank National Association, his mortgage lender. Compl., ECF No. 1-1 at 2. Because Raspberry applied to proceed *in forma pauperis* (ECF No. 1), United States Magistrate Judge Brenda Weksler screened Raspberry's petition for foreclosure mediation and issued a report and recommendation (R&R) that the case be dismissed with prejudice. R&R, ECF No. 3. Raspberry had until January 27, 2025, to object to that recommendation. *Id.* at 2 (citing Local Rule IB 3-2(a) (stating that parties wishing to object to an R&R must file objections within fourteen days)); *see also* 28 U.S.C. § 636(b)(1)(C) (same). Before the deadline, on January 22, 2025, Raspberry filed a motion for voluntary dismissal. ECF No. 4. In Raspberry's motion, he agrees that the case should be dismissed but asks that it be dismissed without prejudice.¹ *Id.* A court may dismiss an action with prejudice if the underlying claims cannot be re-filed in federal court; dismissal with prejudice in federal court does not prevent the plaintiff from pursuing those claims in state court. *Drimmer v. Wd-40 Co.*, 2010 U.S. Dist. LEXIS 148916, *3 (S.D. Cal Mar. 29, 2010) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497 (2001)). Here, Raspberry cannot petition for foreclosure mediation in federal court, and

¹ Once a party files a voluntary dismissal, no order of the court is necessary to effectuate dismissal. *Com. Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1077 (9th Cir. 1999).

1 dismissal with prejudice does not bar Raspberry from petitioning to participate in the program
2 in state court. Also, because I construe² Raspberry's motion to voluntarily dismiss this action as
3 a non-opposition, I adopt the R&R in full and dismiss this case with prejudice. "[N]o review is
4 required of a magistrate judge's report and recommendation unless objections are filed." *Schmidt*
5 *v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150
6 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

7 Conclusion

8 IT IS HEREBY ORDERED that the magistrate judge's report and recommendation [ECF
9 No. 3] is adopted in its entirety, therefore this case is **dismissed with prejudice**.

10 The Clerk of Court is kindly instructed to **terminate** [ECF No. 4] and to close this case.

11 Dated: January 24, 2025

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14 Cristina D. Silva
15 United States District Judge
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² Pro se pleadings are liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)